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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

CHASOM BROWN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF THE
FEBRUARY 14, 2023 HEARING
TRANSCRIPT (DKT. 868)**

Referral: Hon. Susan van Keulen, USMJ

PATRICK CALHOUN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-05146-YGR-SVK

**GOOGLE'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF THE
FEBRUARY 14, 2023 HEARING
TRANSCRIPT (DKT. 985)**

Referral: Hon. Susan van Keulen, USMJ

Case No. 4:20-cv-03664-YGR-SVK

Case No. 4:20-cv-05146-YGR-SVK

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the February 14, 2023 Preservation Hearing Transcript in both *Brown* and *Calhoun* (*Brown* Dkt. No. 868; *Calhoun* Dkt. No. 985) (“Transcript”), which contains non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including details related to Google’s internal projects, internal data sources, and their proprietary functionalities, which Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Transcript:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
February 14, 2023 Transcript of Sealed Preservation Hearing	Highlighted Portions at: Pages 4:12-13, 6:22, 6:24-25, 7:25, 8:1-2, 9:10-11, 9:15-16, 9:18, 9:21-22, 9:25, 10:4, 10:6, 10:12-15, 10:17, 10:19-20, 10:24, 11:3-4, 11:6, 11:16, 11:19, 12:1, 12:4, 12:7, 12:9-10, 12:14, 12:19, 12:21, 12:24, 13:4, 13:16, 13:25, 14:6-7, 14:10-13, 14:17, 14:21, 14:24-25, 15:7, 15:17, 15:21, 16:4-5, 16:11, 16:13, 16:25, 17:1, 17:3, 17:7, 17:11, 17:15, 17:21, 17:25, 18:11, 18:13, 18:24-25, 19:1, 19:3, 20:20, 22:9, 23:10, 23:15, 23:17-18, 23:20, 24:11, 24:13, 24:16, 24:18-20, 25:14, 25:18, 25:25, 26:6, 26:9, 26:16, 27:1-2, 27:4, 27:6, 27:8, 27:15, 27:17, 28:1-2, 28:4, 28:9-10, 28:14, 29:3, 29:7, 29:17, 30:12, 30:19-20, 30:25, 31:1, 31:4, 31:9, 31:15, 32:2, 33:1, 33:4, 33:18, 33:20, 34:15, 34:18-19, 34:21, 37:24, 38:7, 38:9-10, 38:12, 38:19, 38:22, 39:1, 39:4-5, 39:15-16, 40:14, 42:11-12, 42:14-15, 43:8, 43:14, 44:8, 44:11, 44:19, 45:4, 45:9-10, 45:13, 45:15, 45:17-18, 45:22, 46:10, 46:17, 46:22-23, 47:5, 47:7, 47:11, 47:14,	Google

	47:17-18, 47:23, 48:21, 49:1, 49:8-9, 49:12-13, 49:17, 51:6, 51:11, 52:3	
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II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion, such as the underlying motion here, must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under “good cause” standard) (van Keulen, J.). Although the materials that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only consider whether these materials meet the lower “good cause” standard.

III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

1 Courts have repeatedly found it appropriate to seal documents that contain “business
 2 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,
 3 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 4 “contain[] confidential information about the operation of [the party’s] products and that public
 5 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 6 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 7 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 8 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at
 9 *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 10 standard where that information could be used to the company’s competitive disadvantage”) (citation omitted). Courts in this district have also determined that motions to seal may be granted
 11 as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015
 12 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 13 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

15 Here, the Transcript contains confidential and proprietary information regarding highly
 16 sensitive features of Google’s internal systems and operations that Google does not share
 17 publicly. Specifically, this information provides details related to Google’s internal projects,
 18 internal data sources, and their proprietary functionalities. Such information reveals Google’s internal
 19 strategies, system designs, and business practices for operating and maintaining many of its
 20 important services while complying with its legal and privacy obligations.

21 Public disclosure of the above-listed information would harm Google’s competitive standing
 22 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 23 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 24 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 25 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 26 sensitive business information related to Google’s processes and policies to ensure the integrity and
 27 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 28 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because

1 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
 2 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 3 motion to seal as to “internal research results that disclose statistical coding that is not publicly
 4 available”).

5 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 6 compromise Google’s data logging infrastructure. Google would be placed at an increased risk of
 7 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
 8 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
 9 affects how messages are transmitted” because if made public, it “could lead to a breach in the
 10 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
 11 identified information.

12 The information Google seeks to redact, including information related to Google’s internal
 13 projects and data logging systems, is the minimal amount of information needed to protect its
 14 internal systems and operations from being exposed to not only its competitors but also to nefarious
 15 actors who may improperly seek access to and disrupt these systems and operations. The “good
 16 cause” rather than the “compelling reasons” standard should apply but under either standard,
 17 Google’s sealing request is warranted.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court should seal the identified portions of the Transcript.

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